BACKGROUND, PURPOSE AND POLICY RECOMMENDATIONS RELATED TO THE GOVERNOR'S COMMITTEE ON PEOPLE WITH DISABILITIES

Note: This document contains background information and policy recommendations related to the issue area of "Access" only. To access the Committee's full report which covers ten issue areas, please visit the Committee's website here.

ACCESS

GOAL

Enhance participation of people with disabilities in Texas life through increased access.

Overview

On July 26, 2012, the disability community celebrated the 22nd anniversary of the passage of the Americans with Disabilities Act (ADA). The ADA was a landmark piece of civil rights legislation, recognizing the rights of people with disabilities in many areas of American life, including the right of access to programs and facilities. In the 22 years since the passage of the ADA, the United States has seen great progress toward full access for people with disabilities; today, it is hard to remember a time when public parking lots did not contain designated parking places for drivers and passengers with disabilities or when most buildings were not required to include ramps at their entrances. Those two examples are just the tip of the iceberg when it comes to access for people with disabilities, though. In the last two decades, our collective understanding of what it means to be a person with a disability has widened considerably. Today, the concept of accessibility encompasses not just access to the built environment, but also access to communication, information, programs, services and more.

Despite continued progress, there are still areas in need of improvement when it comes to accessibility in Texas. Sixty-eight percent of respondents to the Governor's Committee Citizens' Input Survey rated "physical access to public buildings, programs and services" as "high importance" to them, with another 12 percent rating it as "moderate importance." The open-ended responses demonstrated a wide range of access issues that citizens believe merit further attention, including a desire for more enforcement of current accessible parking laws and the creation of provisions that would restrict use of van-accessible spots to those actually using a van with a lift, rather than to any vehicle with a placard or plate. Citizens also mentioned the completion of new sidewalks and better maintenance of existing sidewalks as priorities. Other comments reflected the evolving understanding of disability, as respondents commented on access needs beyond physical requirements, including sensory considerations for people with autism.

The need for improvement in these areas cannot be blamed solely on a dearth of legal authority on the subjects. Rather, it is worthwhile to examine how the relevant laws are usually enforced. The ADA is enforced in two ways—through voluntary compliance and through citizen complaints submitted to federal enforcement agencies. These two methods of implementation require awareness of the existing law, as well as a willingness on all of the affected parties to engage in the process of bringing facilities and practices into compliance.

The need to comply with relevant law is certainly one reason to enhance accessibility, but there are other compelling reasons beyond legal requirements. Designing with universal accessibility in mind enhances

participation not just by people with disabilities, but also by older Texans, children, people who do not speak English as a first language, and any other population who experiences access challenges. Participation by all of these groups leads to a richer civic life. Further, accessible communities promote health and wellness among members of the community and reduce the usage of motor vehicles.

Background and Purpose: Livable Communities and Complete Streets for the Whole Community

One avenue toward fuller inclusion of people with disabilities is the creation of "Livable Communities." The term "Livable Communities," as used in this document, refers to communities that are designed to promote civic engagement; active, healthy lifestyles; and a sense of place through safe, sustainable community planning and transportation options. Livable Communities are of considerable interest to the survey respondents of the Governor's Committee Citizens' Input Survey: 73 percent of respondents indicated that they "strongly agree" with the proposal to "enhance the physical environment for communities that are walk-able and encourage physical activity, social engagement, and aging-in-place ("Livable Communities") and 15 percent indicated that they "somewhat agree."

A Livable Community designed with the Whole Community in mind is a community that:

- Provides affordable, appropriate, accessible housing
- Ensures accessible, affordable, reliable, safe transportation
- Adjusts the physical environment for inclusiveness and accessibility
- Provides work, volunteer, and education opportunities
- Ensures access to key health and support services
- Encourages participation in civic, cultural, social and recreational activities³

Brennan et al described the value of Livable Communities in this way:

We all want to live in a livable community. Each of us has his or her own image of what such a community should look like. That image is shaped, in part, by our reaction to the communities in which we now live or used to live. For older residents, a livable community would include elements that help them to maintain independence and quality of life.

The physical characteristics of a community often play a major role in facilitating our personal independence. A safe pedestrian environment, easy access to grocery stores and other shops, a mix of housing types and nearby health centers and recreational facilities are all important elements that can positively affect our daily lives. However, poor community design can make it difficult for us to remain independent and involved in the community around us. For instance, a limited mix of housing types can be a challenge to aging within the same community; poorly maintained sidewalks can be a personal safety

concern; and physical barriers, such as busy highways and high walls, can divide and isolate communities.⁴

An important aspect of the success of a Livable Community is the way that people move about within the community. Accessible street design and an assortment of transportation options allow for ease of movement and full participation by all people, including people with disabilities. Smart Growth America discusses the concept of "Complete Streets," one of the tenets of the Livable Communities idea. Complete Streets are streets that provide people with a range of transportation options. By contrast, incomplete streets, which we find in many of our communities, feature unpaved surfaces and sidewalks that are disconnected from one another, narrow, or in poor condition. These streets and sidewalks are difficult for people with disabilities, especially people who use wheelchairs, walk slowly, or have diminished hearing or seeing, to travel safely. Pedestrian walkways spanning broad intersections may not provide enough time for all people to cross safely before the vehicular traffic begins again. Pedestrian crosswalk signals that provide only a visual cue, such as the illuminated "walk" symbol without an accompanying chirping sound or voiced directions can be dangerous for pedestrians with limited or no vision.⁵

It may seem at first that these considerations would affect only a small percentage of our population, but Smart Growth America states that almost one in five Americans faces at least one physical challenge that makes navigation of incomplete streets difficult. Further, planning with Complete Streets in mind is likely to benefit the Whole Community, not only people with disabilities. Developing Complete Streets may be a cost-saving device, as it is likely to reduce the use of expensive services such as paratransit and Medicaid taxi service. Another benefit of planning with Complete Streets in mind is that it affords older Texans the opportunity to age-in-place; as Texans age and potentially lose the ability to drive a car, they will not be put off from visiting friends, neighbors, the grocery store, or pharmacy, if the neighborhood allows for safe navigation on foot or on a small, motorized device.

Smart Growth America describes the benefits of Complete Streets to the whole community:

Streets that are truly "complete" provide all of us with a choice of mobility options. They allow everyone to travel to and from work, school, and other destinations with the same level of safety and convenience, whether or not they have mobility, vision, or cognitive disabilities. Complete Streets also help people who are coping with temporary disabilities as well as those pushing strollers, pulling wheeled luggage, or managing large packages.

Complete Streets policies provide flexibility to transportation professionals and give room to be creative in developing solutions that promote accessible travel. Operating under a policy can prompt a deeper analysis and encourage them to work with community members with disabilities. In roadway design, Complete Streets means attention to details at intersections, such as installing curb ramps, audible or tactile signals for blind pedestrians, and/or providing longer crossing times; along pedestrian routes by providing smooth sidewalks free of obstacles, with usable benches; and at transit stops with ample space to approach, wait, and board safely.

Complete Streets policies remove barriers to independent travel by considering the needs of all users at the outset of every transportation project. Providing transportation choices for everyone, including those with disabilities, improves livability by connecting citizens to their community and by reducing dependence on more costly alternatives, such as paratransit or private transportation service.⁷

When Texas State and local government entities undertake long-range planning for the development and maintenance of communities, they would do well to keep the principles of Livable Communities and Complete Streets in mind.

Policy Recommendations:

- **Recommendation 1.1**: Encourage the principles of "Livable Communities" in the long-range regional planning and development of communities in Texas, including emphasizing accessible transportation options and "Complete Streets."
- **Recommendation 1.2:** Promote safe and accessible mobility options for drivers, public transportation vehicles and patrons, bicyclists, and pedestrians of all ages and abilities in all planning, programming, design, construction, reconstruction, retrofit, operations and maintenance activities and products conducted at the city, county or State level.

Background and Purpose: Accessible Design for All

Federal and State laws contain standards for designing, building and maintaining structures and facilities in a manner that maximizes accessibility for people with disabilities. Just as local building codes contain minimum acceptable levels of requirements related to safety and public health, the Americans with Disabilities Act (ADA) and the <u>Texas Accessibility Standards (TAS)</u> contain minimum acceptable levels of requirements related to access for people with disabilities.

The standards contained in the ADA and the TAS are periodically updated to bring the standards in line with evolving best practices. On March 15, 2012, updates to both the implementing regulations of the ADA and the TAS came into effect. The new ADA standards, known as the 2010 ADA Standards of Accessible Design, both deepened and broadened the existing law. The standards deepened the law by enhancing and clarifying existing requirements for entities that were previously covered under the old standards. Some of these clarifications included issues related to reachable ranges, toilet room dimensions and accessible routes. The standards broadened the law by applying ADA regulations to certain kinds of entities for the first time. The 2010 ADA Standards of Accessible Design set requirements for fixed or built-in elements in amusement park rides, boating facilities, golf and miniature golf facilities, public swimming pools and play areas.

With fairly comprehensive federal regulations in place, what role do State laws and regulatory agencies play? The Texas Department of Regulation (TDLR) plays a hands-on role in implementing Texas's own

accessibility standards, the TAS. TDLR has broad jurisdiction, serving as a licensing agency for more than 20 regulatory programs in Texas, but of particular relevance to the disability community is TDLR's Architectural Barriers Program, which inspects existing buildings and reviews construction plans to help ensure that facilities are accessible to people with disabilities in Texas.⁸

Texas's State law takes a strong position on accessibility requirements; it is a position that lawmakers deserve to be proud of. In Texas, unlike in other states, professionals involved in the building of a new facility are required to submit their construction documents to TDLR for review and inspection related to accessibility before the building begins. This requirement applies to any new project or substantial renovation whose estimated cost is more than \$50,000.⁹

With strong laws in place, what work remains to be done related to physical accessibility in Texas? First, there is a continuing need for increased awareness and compliance coupled with the enforcement of the existing standards and laws. It is easy for affected parties to assume that older buildings are exempt from accessibility requirements because they are "grandfathered in." In fact, the ADA standards do not allow for any "grandfathering;" rather, buildings built before the standards were enacted are subject to an ongoing obligation to come into compliance when it is readily achievable to do so. ¹⁰ One open-ended response to the Governor's Committee Citizens' Input Survey summarized this common misunderstanding: "Many older places are inaccessible and it's due to ignorance more than malice. I would like a way for older places to be inspected for access whenever they renew business permits or whatever contact they have with the government, not only when they remodel or build something new." ¹¹

Second, there is an enforcement problem. As it is, if a facility is out of compliance with either the ADA standards or the TAS, change could be prompted by a private citizen filing a complaint against the facility through either the United States Department of Justice (DOJ) for an ADA violation or through TDLR for a violation of the TAS. This complaint-driven system tends to be slow and inefficient. The DOJ and TDLR staffs are spread thin and unable to respond to every complaint with a full-fledged investigation. Further, some private citizens who observe violations may be reluctant to file a complaint, not wanting to get anyone in trouble, while others may swing in the other direction, and file baseless complaints as an attempted punitive measure.

Preferable to this complaint-driven system would be a system that encourages voluntary compliance on the part of the facilities. In addition to the existing federal tax incentives related to expenses for improving accessibility, ¹² the Texas legislature should consider creative ways to encourage compliance efforts. Further, a robust method of assessing compliance through inspections and site visits would help to ensure accessibility requirements are being met.

Policy Recommendations:

 Recommendation 1.3: Support local and state implementation and development plans for compliance with the accessibility provisions in the revised ADA and TAS standards, and an ongoing method of assessing compliance. • **Recommendation 1.4**: Encourage voluntary compliance with the ADA and TAS by creating incentives for compliance.

Background and Purpose: Accessible Voting

The right to vote is a fundamental American civil right. It may be hard to imagine that logistical obstacles and transportation barriers stand between millions of Americans and their ability to exercise the right to vote, but that is the case for millions of Americans with disabilities each year.

The 2010 U.S. Census data revealed that there are around 56.7 million people with disabilities in the United States. That number represents approximately 19 percent of the U.S. population, making people with disabilities one of the largest minority groups and a potentially powerful voting bloc. Consistently low voter turnout among people with disabilities and the relative rarity with which politicians directly address disability-related issues have left this potential untapped.¹³

A 2012 study of political participation by people with disabilities demonstrated that in 2008, voter participation by eligible people with disabilities was 11 percent lower than participation by those without disabilities. Despite the availability of absentee ballots, accessibility issues at the polls and transportation hurdles account at least in part for low turnout among voters with disabilities. Dismantling the accessibility and transportation barriers that people with disabilities sometimes encounter at the polls could have potentially led to approximately 3 million more voters in 2008 and 3.2 million more voters in 2010. 15

Barriers getting to and using polling places likely play a large role in discouraging voter turnout among people with disabilities. Despite an array of federal laws that require accessibility of polling places for all eligible voters, including the ADA and the Help America Vote Act (HAVA), a study by the Government Accountability Office (GAO) demonstrated that only 27 percent of polling places on Election Day in 2008 had no potential impediments to access by people with disabilities. In the 2000 election survey, 6 percent of people with disabilities who had voted in the past 10 years reported encountering problems in voting at a polling place, while one-third (33 percent) of all others with disabilities said they would expect problems, compared to only two percent of people without disabilities. By failing to provide accessible polling places, federal, State, and local officials are inadvertently sending the message that people with disabilities are not expected to participate in the democratic process.

It is possible to ensure that people with disabilities are provided the opportunity they deserve to vote privately and independently. Ensuring these opportunities will require officials to think broadly about access. ¹⁹ In other words, officials will have to consider the accessibility of all stages of the voting process. How do voters arrive at a polling place; is the polling place on an accessible public transportation route? Further, how will voters enter the building and travel to the polling place? How do voters interact with the voting system itself? Is the voting system accessible to people with diverse disabilities, including visual and mobility disabilities? ²⁰

In addition to thinking broadly about access, officials may want to start using technology to address transportation and accessibility challenges at polling places. Current advances in technology are already

affording new opportunities for people with disabilities to vote in other states. In November of 2011, Oregon became the first state to allow residents who have trouble filling out traditional mail-in paper ballots to electronically vote through Apple's iPad tablet device. Eighty-nine voters with disabilities took advantage of this innovation during a special primary election. The voters used an iPad to mark their ballots. The iPads were provided by election workers, who visited the voters at their residences, then printed the ballots on portable wireless printers. The voters then had the option to mail in their ballots themselves or have the election workers drop the ballots off at election stations. In addition to allowing voters to avoid transportation issues, the iPad also allowed for an array of accommodations for voters with disabilities that affect their ability to cast a traditional ballot. A man who could not hold a pen due to arthritis was still able to use the iPad's touch screen to complete his ballot, and a woman with low vision was able to enlarge the type on her screen to read the choices clearly. The iPad also allows for voters to attach their own joysticks or paddles, translates the ballots for voters who do not speak English, and even reads the ballot aloud for voters who are blind.²¹

Respondents to the Texas Governor's Committee Citizens' Input Survey indicated interest in using technology to increase voting accessibility. Sixty-nine percent of respondents indicated that they "strongly agree" with the proposition to "use technology to make voting more accessible to people with disabilities" and 15 percent indicated that they "somewhat agree" with the proposition.²²

Equal access to voting has been an ongoing concern for many Texans with disabilities, but a renewed focus on compliance with existing laws and the exploration of emerging opportunities through modern technology could move this cause forward substantially.

Policy Recommendations:

- **Recommendation 1.5**: Require all polling places for voting to fulfill the legal requirements to be fully accessible to people with disabilities.
- Recommendation 1.6: Explore ways to locate polling places that are on accessible transportation routes.
- **Recommendation 1.7**: Explore the use of new technologies that will increase accessibility for voters with disabilities.

ENDNOTES

¹ 2012 Texas Governor's Committee Citizens' Input Survey

² Ibid

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⁴ Ibid

⁵ Smart Growth America (2012) *National Complete Streets Coalition*. Retrieved from the Smart Growth America website: http://www.completestreets.org/complete-streets-fundamentals/factsheets/disabilities/

⁶ Ibid

⁷ Ibid

⁸ Sunset Advisory Commission. (June 2002). *Sunset Commission Decisions: Texas Department of Licensing and Regulations*, p. 1. Retrieved from the SAC website: http://www.sunset.state.tx.us/78threports/tdlr/dec_02.pdf

⁹ Texas Board of Architectural Examiners. (2012, November 1). *Accessibility in Texas*. Retrieved from: http://www.tbae.state.tx.us/LawsAndEnforcement/Accessibility

¹⁰ Americans with Disabilities Act of 1990, 42. U.S.C.A. § 12181(9)

¹¹ 2012 Texas Governor's Committee Citizens' Input Survey

¹² Adaptive Environment Centers. (1998, September 4). *ADA Fact Sheet on Tax Incentives for Improving Accessibility*. Retrieved from the ADA website: http://www.ada.gov/archive/taxpack.pdf

¹³ Dole, B. & Coelho, T. (2012, September 16) *Disabled voters possess untapped political power*. Retrieved from the Politico website: http://www.politico.com/news/stories/0912/81268.html

¹⁴ Schur, L. & Adya, M.; Social Science Quarterly (2012) *Sidelined or Mainstreamed? Political Participation and Attitudes of People with Disabilities in the United States*. Retrieved from the Wiley Online Library website: http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6237.2012.00885.x/abstract

¹⁵ Ibid

¹⁶ United States Government Accountability Office. (2009, June10). *Voters with Disabilities: More Polling Places Had No Potential Impediments Than in 2000, but Challenges Remain*, GAO-09-685. Retrieved from the GAO website: http://www.gao.gov/products/GAO-09-685

¹⁷ Kruse, D., Schur, L., Schriner, K. & Shields, T. (2011) *Fact Sheet on Voter Turnout, Voting Difficulties, and Disability in the 2000 Elections*. Retrieved from The Center for Accessible Society website: http://www.accessiblesociety.org/topics/voting/voterturnout.htm

¹⁸ Schur, L. & Adya, M.; Social Science Quarterly (2012) *Sidelined or Mainstreamed? Political Participation and Attitudes of People with Disabilities in the United States*, p. 26. Retrieved from the Wiley Online Library website: http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6237.2012.00885.x/abstract

¹⁹ United State Government Accountability Office. (September 2009). *Government Accountability Report, Additional Monitoring of Polling Places Could Further Improve Accessibility*, GAO-09-941, p.36. Retrieved from GAO website: http://www.gao.gov/assets/300/296294.pdf

²⁰ United State Government Accountability Office. (September 2009). *Government Accountability Report, GAO-09-941 - Additional Monitoring of Polling Places Could Further Improve Accessibility*, p. 36. Retrieved from GAO website: http://www.gao.gov/assets/300/296294.pdf

²¹ Seelye, K. (2011, November 16). *Oregon Tests iPads as Aid to Disabled Voters*. Retrieved from the New York Times website: http://www.nytimes.com/2011/11/17/us/oregon-tries-out-voting-by-ipad-for-disabled.html? r=1&smid=fb-share

²² 2012 Texas Governor's Committee Citizens' Input Survey